

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
(at Cincinnati)

Carl Oeder & Sons Sand & Gravel,
A Division of Oeder & Sons Garage
Incorporated

and

Timothy Browning

Plaintiffs,

v.

Union Township,

Defendant.

* Case No. C-1-01-826

* District Judge Susan J. Dlott

*

AGREED JUDGMENT ENTRY

*

AND

*

CONSENT DECREE WITH
PERMANENT INJUNCTION

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*

Plaintiffs Carl Oeder & Sons Sand & Gravel, a division of Oeder & Sons Garage Incorporated, and Timothy Browning and Defendant Union Township have stipulated to the provisions set forth in this *Agreed Judgment Entry and Consent Decree with Permanent Injunction*.

WHEREAS, Defendant Union Township, Warren County, Ohio, acting by and through its duly elected and authorized Board of Trustees, adopted Resolution No. 112000-01 on or about November 20, 2000;

WHEREAS, Plaintiffs initiated the within action seeking declaratory judgment, injunctive relief, and other damages against Defendant Union Township for its adopting, administering, and enforcing of Resolution No. 112000-01;

WHEREAS, Plaintiffs have claims for money damages against Defendant Union Township that have remained pending in this Court;

WHEREAS, United States District Judge Susan J. Dlott ordered court-conducted mediation in this case and designated United States Magistrate Judge Sharon L. Ovington as the mediator;

WHEREAS, United States District Judge Sharon L. Ovington conducted the court-ordered mediation on November 18, 2003 and February 25, 2004, at which time the issues pending in this action were mediated;

WHEREAS, as a result of the mediation, the parties in this case have reached an understanding and agreement as to the settlement of said litigation, which terms are agreed to and set forth in this *Agreed Judgment Entry and Consent Decree with Permanent Injunction* (hereinafter the "*Consent Decree*");

IT IS THEREFORE agreed by and between the parties as set forth below, and thus **DECREED** as follows:

1. Defendant Union Township shall remit the amount of \$150,000.00 to Plaintiffs representing the full amount agreed upon at the mediation on February 25, 2004 for the settlement of all claims of all Plaintiffs, including money damages, attorney's fees, costs, and otherwise against Defendant Union Township. Defendant Union Township shall employ its best efforts to

remit said amount within thirty (30) days of the signing of this *Consent Decree* and shall forward said amount to Plaintiffs' attorneys at Brady, Coyle & Schmidt, LLP, 4052 Holland Sylvania Road, Toledo, Ohio 43623.

2. Except for the rights and obligations imposed by the provisions set forth herein, Plaintiffs hereby release, acquit, and forever discharge Defendant Union Township, its Board of Trustees and elected officials, including, but not limited to, John Louallen, Lionel Lawhorn and Russell Kilburn, and each of their employees, representatives, agents, attorneys, and successors from all manner of claims, actions and causes of actions, suits, debts, damages, costs, attorney fees, obligations, sums of money, judgments, demands and rights whatsoever, in law or in equity, known or unknown, that Plaintiffs have or had, relating to or in any manner arising out of the adoption, administration or enforcement of Resolution No. 112000-01 which is the subject of this litigation, whether or not raised in the litigation.
3. Defendant Union Township and all those acting jointly, in concert with, or pursuant to instructions therefrom, are permanently enjoined and restrained from enforcing Resolution No. 112000-01, which Resolution prohibits vehicles weighing over 20,000 pounds from using Snook Road, Dry Run Road or Lebanon Road.
4. The parties hereto agree that neither this *Consent Decree* nor the payment made hereunder constitutes, or shall be construed as, an admission of liability or any wrongdoing of any kind by Defendant Union Township, its Board of

Trustees, elected officials, employees, agents or representatives. This *Consent Decree* is entered into solely to resolve disputed claims and to avoid any further litigation between the parties.

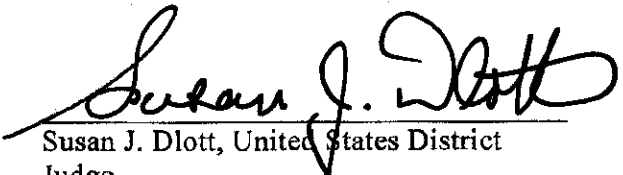
5. The provisions of this *Consent Decree* are not intended to, and are not to be interpreted to, supersede any current or future state or federal laws that may conflict with the provisions hereof.
6. The terms and provisions hereof shall be binding upon and shall inure to the benefit of the parties, their successors, assigns, affiliates, agents, officers, and employees.
7. Any changes, amendments, or revisions to the terms and provisions hereof shall be in writing and shall be agreed upon by the parties.
8. In the event Union Township violates any of the terms or provisions of this *Consent Decree*, Plaintiffs shall have the right to enforce such terms or provisions by filing a motion to this action with the instant Court, and the Court shall retain jurisdiction herein. In the event Union Township is found to be in contempt of court, then Plaintiffs shall be entitled to recover their reasonable attorney's fees and expenses related to the enforcement of their rights herein as provided by law.
9. Upon full execution of this *Consent Decree*, the parties shall cause their respective attorneys to effectuate the dismissal of the lawsuit with prejudice and without interest, costs, or attorneys' fees. Pursuant to the *Dismissal*

Entry, the parties shall bear their own costs, expenses, and attorney fees. The

Dismissal Entry shall be in the form which is attached hereto as Exhibit "A."

10. The terms of this *Consent Decree* were approved by the Union Township Board of Trustees on Monday, March 1, 2004, pursuant to Resolution No. 030104-01.
11. This *Consent Decree* may be executed in counterparts and facsimile copies of signatures shall be treated as originals for all purposes.
12. The parties hereto acknowledge that the persons executing this *Consent Decree* have full authority to enter into this *Consent Decree*.

IT IS SO ORDERED.


Susan J. Dlott, United States District
Judge

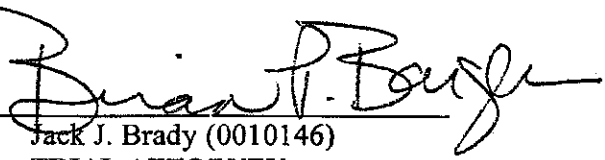
ACCEPTED AND AGREED:

Plaintiffs:

Carl Oeder & Sons Sand & Gravel,
a Division of Oeder & Sons Garage Incorporated

By: 
David Oeder, Vice President



Timothy Browning, Individually

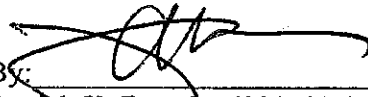
By: 
Jack J. Brady (0010146)
TRIAL ATTORNEY
Brian P. Barger (0018908)
Patricia J. Kleeberger (0070068)
BRADY, COYLE & SCHMIDT, LLP
4052 Holland Sylvania Road
Toledo, Ohio 43623-2591
(419) 885-3000
(419) 885-1120 (Fax)
Attorneys for Plaintiffs

Defendant, Union Township
Board of Trustees

By: 
John Louallen, Township Trustee

By: 
Lionel Lawhorn, Township Trustee

By: 
Russell Kilburn, Township Trustee

By: 
Patrick K. Dunphy (0017827)
TRIAL ATTORNEY
FALKE & DUNPHY LLC
30 Wyoming Street
Dayton, Ohio 45409
(937) 222-3000
(937) 222-14149 (Fax)
Attorney for Defendant
Union Township
Board of Trustees

Approved As To Form:

Rachel Hutzle, Prosecuting Attorney
Warren County, Ohio

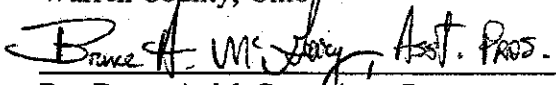
 Asst. Pros.
By: Bruce A. McGary, Asst. Prosecutor
Statutory Legal Counsel for Defendant,
Union Township Board of Trustees

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
(at Cincinnati)

Carl Oeder & Sons Sand & Gravel,	*	Case No. C-1-01-826
A Division of Oeder & Sons Garage	*	
Incorporated	*	District Judge Susan J. Dlott
and	*	
Timothy Browning	*	<u>DISMISSAL ENTRY</u>
Plaintiffs,	*	
v.	*	
Union Township,	*	
Defendant.	*	
	*	
	*	

Now come Plaintiffs Carl Oeder & Sons Sand & Gravel, a division of Oeder & Sons Garage Incorporated and Timothy Browning and Defendant Union Township and hereby stipulate and agree to the dismissal of all claims against the Defendant with prejudice. Moreover, this dismissal is subject to the terms and conditions set forth in the *Agreed Judgment Entry and Consent Decree with Permanent Injunction* entered into between the parties. The parties shall bear their own attorneys' fees and costs.

Respectfully submitted,

BRADY, COYLE & SCHMIDT, LLP

By _____

Jack J. Brady (0010146)

TRIAL ATTORNEY

Email: jjbrady@bcslawyers.com

Brian P. Barger (0018908)

Email: bpbarger@bcslawyers.com

Patricia J. Kleeberger (0070068)

Email: pjkleeberger@bcslawyers.com

4052 Holland-Sylvania Road

Toledo, OH 43623

Telephone: (419) 885-3000

Facsimile: (419) 885-1120

Attorneys for Plaintiffs

FALKE & DUNPHY LLC

By _____

Patrick K. Dunphy (0017827)

TRIAL ATTORNEY

30 Wyoming Street

Dayton, Ohio 45409

Telephone: (937) 222-3000

Facsimile: (937) 222-14149

Attorney for Defendant Union Township

IT IS SO ORDERED.

Susan J. Dlott, United States District Judge